

## System Administrator

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**From:** Ross, Scott  
**Sent:** Monday, July 19, 2010 8:44 AM  
**To:** Barfield, David; Beightel, Chris; Griggs, Burke; Cao, Hongsheng; Grunewald, Chris; Dale Book; David Pope; Starkey, H. David; Donna Ormerod; JDraper@montand.com; Juricek, Chelsea; slarson@sspa.com; Perkins, Sam; Ross, Scott; Samuel.Speed@ksag.org  
**Subject:** FW: FCID testimony for the MRNRD  
**Attachments:** FCID testimony for the MRNRD IMP June 8 2010.pdf

Team,

Just received this document from Marv, it is FCID testimony for the MRNRD hearing on IMP's.

Scott

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**From:** Swanda, Marvin R [<mailto:MSwanda@usbr.gov>]  
**Sent:** Monday, July 19, 2010 8:51 AM  
**To:** Ross, Scott  
**Subject:** FW: FCID testimony for the MRNRD

Scott—As requested.

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**From:** Brad Edgerton [<mailto:Brad.Edgerton@fcidwater.com>]  
**Sent:** Wednesday, June 09, 2010 9:31 AM  
**To:** 'Dunnigan, Brian'  
**Cc:** 'Schneider, Jim'; [Leroy.sievers@nebraska.gov](mailto:Leroy.sievers@nebraska.gov); 'Jeanelle R. Lust'; Katherine S. Vogel; Thompson, Aaron M; Swanda, Marvin R  
**Subject:** FCID testimony for the MRNRD

Brian

Attached is a copy of FCID's testimony at the MRNRD's hearing last night.

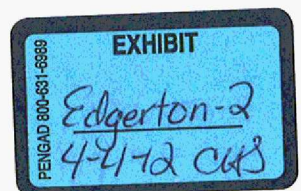
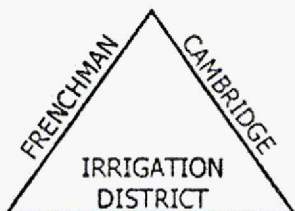
I worked with Reclamation on the water short year scenario and I believe it is very close to reality.

Thanks

Brad

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**MRNRD IMP Hearing  
June 8<sup>th</sup> 2010  
Frenchman Cambridge Irrigation District's Testimony**

Director Dunnigan and members of the Board of Directors for the MRNRD, Thank you for the opportunity to offer comments on the Integrated Management plan that the Department and the NRD put before the water users and citizens of the Basin. I am here to offer comments on behalf of the Board of Directors for FCID.

This plan does have some potential to avoid most short term compact violations; however we do question the ability of Nebraska to comply in the long term.

As far as eliminating or reducing future conflicts between water users in the Basin this plan does nothing to address this and will more than likely only intensify the internal disputes among users? These disputes will cost money and valuable staff time for all parties involved. And more importantly will demonstrate to Kansas and the U.S. Supreme Court that Nebraska's water policies and integrated management is flawed and inept. The Rules the MRNRD has adopted really aren't rules at all, but just a guideline as this NRD schedules variance hearings monthly so they can select which rules apply to which group of water users. An example would be the supplemental wells located in the Frenchman Basin have never been subject to the supplemental well rule 5-3.11. Water users outside the Frenchman Basin have applied for the exact same variance but have been turned down.

The core issues that need resolved before this IMP can be successful is a clear understanding of whose responsible and to what degree. Dividing the water supply 44%, 30% and 26% between the 3 NRDs then requiring surface water appropriations to provide 51% (115,606 surface water acres) of the total (225,606) acres curtailed during water short years is simply unacceptable.

Some of the short comings are with the goals and objectives.

1. Objectives #2: *Ensure administration of surface water appropriations in the Basin is in accordance with the Compact and Nebraska law and the surface water controls of this IMP;*

To my knowledge I don't believe there are any Federal laws within the Compact that requires Nebraska to administer surface water in a particular manner; unless you are referring to the sub-basin allocations. Or perhaps you have this compact confused with other compacts around the United States. Mr. Dunnigan, I would recommend striking "the Compact and" from Objective number two.

2. Objectives #3: *Achieve, on average, a twenty percent (20%) reduction in 98-02 pumping volume under average precipitation conditions.*

Pumping volume that occurred in 1998 – 2002 represents depletions to the stream sometime in the future. The true measure of success should be calculated by the water diverted from the stream due to ground water pumping. The depletions that occurred in the base-line period more than likely are from pumping that occurred during the 1980s or 1990s; this is the level of pumping that should be considered for the base-line. Cut backs from this level may actually accomplish some of the goals and objects.

The allowable ground water depletions is the allocation left after all the surface water consumptive use is accounted for, yet Nebraska says we have to reduce surface water depletions so the allowable GW depletions are at the maximum level in water short years. And only then will the NRDs have a chance to comply with the IMPs and Nebraska can comply with the compact. I am sure Kansas and the U.S. Supreme Court can come to the same conclusion.

3. Goal #5 is required by statutes, and is incorrectly stated in this IMP.

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**MRNRD IMP Hearing  
June 8<sup>th</sup> 2010  
Frenchman Cambridge Irrigation District's Testimony**

This goal requires the NRD to protect all existing users, both surface and GW from new depletions that occur after the Basin was preliminarily determined to be fully appropriated; this date would be May 20, 2003. Your current narrative sets the date as July 16, 2004 which is the date of the final determination.

The estimated amount of stream flow diverted from the stream in the MRNRD from GW pumping was approximately 48,000 AF at the time of the preliminary determination. Therefore diversions in excess of 48,000 AF between the years 2003 and 2009 violate goal number 5. I see nothing in this IMP that addresses this issue or even comes close to achieving this goal ever.

The original IMP signed in 2005 required a 5% reduction in pumping to offset these anticipated depletions, we now know this was grossly under estimated and even have tried 20% reductions in more recent years with still no success in stopping the steady increase in stream depletions. In 2009 I anticipate the MRNRD will surpass 64,000 AF diverted from the river due to ground water pumping. This is 16,000 AF over the requirement of goal #5.

To quote the State engineer from Kansas: "groundwater storage depletions are simply streamflow depletions waiting to happen"

I think most everyone in this room will agree with that statement.

The MRNRD has a ground water decline problem in Hayes County and continues to grant variances that allow new wells to be drilled in this area. This is a big concern to Frenchman Cambridge water users and is just another example of why Nebraska's attempt at integrated water management has failed.

4. Surface water Controls:

- a. 46-716 (d) says the State can adopt reasonable restrictions on surface water use which are consistent with the intent of section 46-715. I don't think the intent of 46-715 was to shut down Federal projects and bankrupt political sub-divisions. The surface water controls the state proposed are far from "reasonable" and should not be adopted.

5. Water short year reality. (see attached)

Conclusion: it's obvious Nebraska is willing to do whatever it takes to comply with the compact and is willing to do just about anything to convince Kansas this can be achieved. Until Nebraska accepts the fact that this basin is way over developed and implements a plan to aggressively retire acres our fate will more than likely be decided by a Court. I ask would Frenchman Cambridge water users be better off with State regulations or would we be better with Federal regulations. These new state regulations are attempting to define a junior permit by physical proximity to the River and "first in time" will have no preference going forward. Is this really what we want in Nebraska? If this board elects to adopt this plan keep in mind the bridge is being burnt down behind you; there no going back without the Governor's approval.

Thank you,

Brad Edgerton, Manager FCID

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